

**ABUSE OF PROCESS AND DEMAND LETTERS**

**AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Norman K. Thurston**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill enacts a cause of action for abuse of process and demands concerning the Americans with Disabilities Act.

**Highlighted Provisions:**

This bill:

- ▶ provides legislative findings;
- ▶ defines terms;
- ▶ prohibits abuse of process and payment demands;
- ▶ establishes remedies;
- ▶ provides for exceptions; and
- ▶ provides for severability.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**78B-6-2201**, Utah Code Annotated 1953

**78B-6-2202**, Utah Code Annotated 1953



- 28 [78B-6-2203](#), Utah Code Annotated 1953
- 29 [78B-6-2204](#), Utah Code Annotated 1953
- 30 [78B-6-2205](#), Utah Code Annotated 1953
- 31 [78B-6-2206](#), Utah Code Annotated 1953

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33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **78B-6-2201** is enacted to read:

35 **Part 22. Abuse of Process Concerning Americans with Disabilities Act**

36 **78B-6-2201. Title -- Purpose.**

37 (1) This part is known as the "Abuse of Process Concerning Americans with  
38 Disabilities Act."

39 (2) This part seeks to protect Utah persons, businesses, and property owners from  
40 abuse of process when a person wrongfully asserts a violation of the public accommodations  
41 protections of the Americans with Disabilities Act and demands settlement compensation by  
42 threatening to commence litigation alleging violation of public accommodations protections of  
43 the Americans with Disabilities Act by the persons, business owners, or property owners to  
44 induce or compel payment of unjust compensation.

45 (3) This part is intended to apply only to public accommodations protections of the  
46 Americans with Disabilities Act and is not intended to apply to demands or communications in  
47 other areas of the law.

48 Section 2. Section **78B-6-2202** is enacted to read:

49 **78B-6-2202. Definitions.**

50 As used in this part:

51 (1) "Abusive compensation demand" means a letter, email, or other written  
52 communication directed to a target that wrongfully asserts, as determined under Section  
53 [78B-6-2203](#), that the target has violated the public accommodations protections of the  
54 Americans with Disabilities Act to obtain compensation, in excess of the reasonable attorney  
55 fees that the Americans with Disabilities Act allows, as a condition of forbearance of filing  
56 threatened litigation.

57 (2) "Disability advocate agency" means an entity that:

58 (a) has as its primary purpose advocating or assisting persons with a disability;

59 (b) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue  
60 Code; and

61 (c) is primarily funded from federal grants, charitable contributions, and money from  
62 the state.

63 (3) "Protection and advocacy agency" means an entity designated by the governor  
64 pursuant to federal law for the protection and advocacy of persons with disabilities.

65 (4) "Public accommodations protections of the Americans with Disabilities Act" means  
66 a violation of Title III of the Americans with Disabilities Act, 42 U.S.C. Secs. 12181 through  
67 12189.

68 (5) "Sponsor" means a party responsible, in whole or in part, directly or indirectly, for  
69 issuance of an abusive compensation demand.

70 (6) "Target" means a person residing in, doing business in, incorporated in, or  
71 organized under the laws of this state that receives an abusive compensation demand.

72 Section 3. Section **78B-6-2203** is enacted to read:

73 **78B-6-2203. Prohibition against abusive compensation demands.**

74 (1) A sponsor may not issue an abusive compensation demand to a target under threat  
75 of litigation.

76 (2) A court may consider the following factors as evidence in determining whether a  
77 sponsor has issued an abusive compensation demand:

78 (a) whether the demand fails to contain a description of a valid instance that constitutes  
79 a violation of the public accommodations protections of the Americans with Disabilities Act in  
80 sufficient detail to allow the target to assess the merits of the alleged violation of the public  
81 accommodations protections of the Americans with Disabilities Act;

82 (b) whether the demand contains any of the following:

83 (i) an assertion of a violation of the public accommodations protections of the  
84 Americans with Disabilities Act that the sponsor knows has been previously adjudicated or  
85 settled;

86 (ii) an assertion that a complaint has been filed alleging that the target has violated the  
87 public accommodations protections of the Americans with Disabilities Act, when no complaint  
88 has been filed;

89 (iii) an assertion of a violation of the public accommodations protections of the

90 Americans with Disabilities Act for which the sponsor does not have the right to file a  
91 complaint;

92 (iv) an assertion or threat that the settlement amount will increase if the target retains  
93 counsel to defend against the assertions in the demand;

94 (v) a false or misleading statement; or

95 (vi) a demand for payment of compensation within an unreasonably short period of  
96 time depending on the number and complexity of the claims;

97 (c) whether the sponsor has shown a pattern or practice of issuing abusive  
98 compensation demands in excess of reasonable attorney fees;

99 (d) whether the sponsor received any unjust enrichment; and

100 (e) any other factor the court considers relevant.

101 Section 4. Section **78B-6-2204** is enacted to read:

102 **78B-6-2204. Action -- Enforcement -- Remedies -- Damages.**

103 (1) (a) A target who receives an abusive compensation demand may bring an action in  
104 district court.

105 (b) (i) A court may award or impose any relief the court considers equitable, including  
106 the following remedies to a target who prevails in an action brought pursuant to this part:

107 (A) equitable relief; and

108 (B) actual damages.

109 (ii) A court may award reasonable attorney fees and court costs to the prevailing party.

110 (2) A court may dismiss with prejudice an action brought under this section if the court  
111 determines that the person bringing the action is doing so for a purpose that violates 42 U.S.C.  
112 Sec. 12203 or this part.

113 Section 5. Section **78B-6-2205** is enacted to read:

114 **78B-6-2205. Exceptions.**

115 The following are exempt from this part:

116 (1) a protection and advocacy agency;

117 (2) a disability advocate agency; or

118 (3) an individual or professional who:

119 (a) acts in good faith; and

120 (b) does not have a pattern of abusive compensation demands.

121 Section 6. Section **78B-6-2206** is enacted to read:

122 **78B-6-2206. Severability clause.**

123 If any provision of this part, or the application of any provision to any person or  
124 circumstance, is held invalid, the invalidity does not affect other provisions or applications of  
125 this part that can be given effect without the invalid provision or application, and to this end  
126 the provisions of this part are severable.